



November 15, 1999

Mr. Loren Svor  
Assistant General Counsel  
Texas Department of Banking  
2601 N. Lamar Boulevard  
Austin, Texas 78705-4294

OR99-3242

Dear Mr. Svor:

You ask whether certain information is subject to required public disclosure under the Texas Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 129432.

The Texas Department Of Banking (the "department") received a request for the names of the officers of two particular banks and for the audit dates for the past five years for those banks. You state that the only place the department maintains the officers' names is in the confidential portion of the banks' examination reports. You also state that the officers' names are commercially available. You evidently have not released the officers' names to the requestor in reliance on section 552.027 of the Government Code and have informed the requestor of the commercial availability of the officers' names. You state that the department "is privileged from providing this section of the examination report, citing the case of *Stewart v. McCain*, 575 S.W.2d 509 (Tex. 1978). You also assert that the examination dates are excepted from required public disclosure based on sections 552.101 and 552.112 of the Government Code.

Section 552.027(a) of the Government Code is not authority for the department to withhold the officers' names from the requestor. That provision states that a governmental body is not required to comply with a request for a copy of information in a commercial book or publication purchased or acquired by the governmental body for research purposes if the book or publication is commercially available to the public. The responsive information is apparently in the examination reports. The requestor has not requested access or copies of the commercial publication. The fact that the information may otherwise appear in a commercially available book or publication does not justify withholding the information in other department records.

Section 552.101 of the Government Code excepts from disclosure information that is deemed confidential by law, including information made confidential by statute. Section 31.301 of the Finance Code makes confidential information in an examination report that the

department obtained from a financial institution. You have not submitted to this office copies of the information responsive to the request for the officers' names.<sup>1</sup> To the extent the responsive information is information that the department obtained from the bank and that is found in the banks' examination reports, the department must not release the information to the requestor based on section 552.101 in conjunction with section 31.301 of the Finance Code. *See* Open Records Decision No. 147 (1976).

As responsive to the request for the banks' examination dates, you submit a print out of the banks' examination history. You raise section 552.112 of the Government Code. Section 552.112(a) reads as follows:

Information is excepted from [required public disclosure] if it is information contained in or relating to examination, operating, or condition reports prepared by or for an agency responsible for the regulation or supervision of financial institutions or securities or both.

Prior decisions of this office have applied this exception to the department's records. *See e.g.*, Open Records Decisions Nos. 261 (1980), 147 (1976). We believe the information at issue is information relating to the department's examination of the banks. Accordingly, we conclude that the department must not release the information to the requestor based on section 552.101 of the Government Code.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,



Kay H. Hastings  
Assistant Attorney General  
Open Records Division

KHH/ch

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<sup>1</sup>Section 552.301(e) of the Government Code requires a governmental body that requests an attorney general opinion to supply to the attorney general the specific information requested. Failure to comply with this requirement results in the presumption that the information is subject to public disclosure. *See* Gov't Code § 552.302. The presumption of openness can be overcome by a showing that the information is deemed confidential by law. *See* Open Records Decision No. 150 (1978).

Ref: ID# 129432

Encl. Submitted documents

cc: Ms. Ruth Rendon  
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(w/o enclosures)